No. 11972

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

CURTIS COURANT,

Appellant,

vs.

INTERNATIONAL PHOTOGRAPHERS OF THE MOTION PICTURE INDUSTRY, LOCAL 659, etc., *et al.*,

Appellees.

REPLY BRIEF OF APPELLANT.

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TABLE OF AUTHORITIES CITED

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Statutes

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Introduction.

Appellees have completely failed to meet the contention of appellant that his claim is in part founded upon Section 7 of the National Labor Relations Act, granting him the right to join labor organizations (see App. Op. Br. pp. 2, 4, 5, 14, 36 and 43). It has been distinctly held that such a right was granted under the National Labor Relations Act.

> "Although the shipbuilding industry may affect interstate commerce and therefore may be subject to the provisions of the National Labor Relations Act (49 Stats. 449; 29 U. S. C. A. §§151-166), there is nothing in the act that gives the defendant unions a right to maintain a closed or partially closed member-

ship together with a closed shop agreement. To the contrary, a reasonable interpretation of the statute, together with its underlying policy, would seem to require that unions chosen to represent the employees must be open to all who wish to join."

James v. Marinship Corp., 25 Cal. 2d 721, 735, 155 P. 2d 329.

"The union defendants next contend that the trial court did not have jurisdiction over the subject matter because, they assert, if an injunction were granted it would in effect destroy their closed shop contract and affect the status of the employees of the shipyards, and it would thus interfere with the rights of collective bargaining granted by the National Labor Relations Act. * * * That act clearly does not give a union the authority to maintain a closed shop agreement together with an arbitrarily closed union membership. Moreover, the rights which plaintiffs seeks to enforce not only are consistent with the provisions of the federal act but appear to be affirmatively granted thereby."

Williams v. Int. etc. of Boilermakers, 27 Cal. 2d 586, 593, 165 P. 2d 903.

The same rule applies under the Railway Labor Act:

"* * * a union acting as the exclusive bargaining agent under the law, for all employees, cannot act arbitrarily, cannot deny equality of privilege, to individuals or minority groups merely because membership in the organization is voluntary. To hold otherwise would do violence to basic principles of our American system."

Betts v. Easley, 161 Kan. 459, 166 A. L. R. 342, 351, 169 P. 2d 831.

Appellant hereinafter briefly responds to the Answering Brief of Appellees Local 659, etc. and the numbered points correspond to the points of Appellees in their brief.

I.

Appellant makes no contention that the ordinary fraternal lodge would be subject to the limitations of our Treaty with Poland or the Charter of the United Nations. Appellant does contend that appellees acting as exclusive bargaining representatives by virtue of the National Labor Relations Act, are agencies functioning under Federal powers and, until Congress specifically authorizes them to violate United States treaties, they are bound by such treaties, as would be any other governmental agency whether State or Federal.

> "We think that the Railway Labor Act imposes upon the statutory representative of a craft at least as exacting a duty to protect equally the interests of members of the craft as the Constitution imposes upon a legislature to give equal protection to the interests of those for whom it legislates. Congress has seen fit to clothe the bargaining representative with powers comparable to those possessed by a legislative body both to create and restrict the rights of those whom it represents, *cf. J. I. Case Co. v. National Labor Relations Board, supra,* 321 U. S. 335, 64 S. Ct. 579, but it has also imposed on the representative a corresponding duty."
>
> *Steele v. Louisville & N. R. Co.,* 65 S. Ct. 226, 232, 323 U. S. 192, 202.

"In the light of the history and purpose of the Act, as construed in many decisions, the trial court's view that the acts complained of are solely those of 'a private association of individuals' is wholly untenable. The acts complained of are those of an organization acting as an agency created and functioning under provisions of Federal law. This being true, it is unnecessary to consider appellees' contention that the Fifth Amendment is not here applicable because it relates only to action by the Federal government and not to acts of private persons."

Betts v. Easley, 161 Kan. 459, 166 A. L. R. 342, 350, 169 P, 2d 831.

II.

Appellant does not dispute the principle of law set forth under this numbered point of the Answering Brief of Appellees Local 659, etc., but has argued throughout his Opening Brief that a substantial question involving the construction and effect of Federal laws is the subject matter of this action.

III.

The Anti-Trust laws as set forth on page 10 of the Answering Brief of Appellees Local 659, etc., provides that nothing "shall restrain members of such organizations from lawfully carrying out the legitimate objects thereof." The appellant contends that the monopoly of the appellees in excluding all non-members from their union and not permitting them to work to prevent competition is to be condemned under the Anti-Laws laws just as much as a similar practice by an association of business men.

Hunt v. Crumboch, 325 U. S. 821, 65 S. Ct. 1545, 89 L. Ed. 1954, is not similar to the present case.

IV.

Point IV of the Answering Brief of Appellees Local 659, etc., is similar to their point II. If the National Labor Relations Act does not regulate commerce then many cases upholding its constitutionality must be overruled. The real question again is whether substantial rights are involved under that Act, the Treaties, and other Acts set forth in Appellant's Opening Brief.

V.

Appellees Local 659, etc., claim under their point V that no jurisdiction in the type of case considered was specifically given to the Federal courts by the terms of the National Labor Relations Act of 1935. This is unquestionably true, but we again emphasize that we are concerned whether any other Federal rights have been infringed by the appellees and, if so, whether under the case of *Stark v. Wickard,* 321 U. S. 288, 64 S. Ct. 559, 88 L. Ed. 733 (cited in App. Op. Br. p. 44), the Federal courts may give appropriate relief in the exercise of their general jurisdiction.

Appellees do not claim that the National Labor Relations Board could have given appellant any administrative relief under the National Labor Relations Act of 1935, so therefore, the appellant is properly in the Federal court as to that portion of his complaint occurring prior to the effective date of the Labor Management Relations Act of 1947. This latter Act did not release or extinguish any liabilities incurred under the original Act. *N. L. R. B. v. Mylan-Sparta Co.* (C. C. A. 6), 166 F. 2d 485, 488.

Upon the allegations as set forth in the complaint, the National Labor Relations Board under the Labor Management Relations Act of 1947, has no jurisdiction

or authority to give any relief to appellant because no overt acts tantamount to unfair practices for labor organizations have been alleged by the appellant from the time of the effective date of the Labor Management Relations Act of 1947. Before the National Labor Relations Board is given jurisdiction to take steps against a union under the 1947 Act, the union must have committed an act or practice. (Title I, Section 101 (b) (j) (k) and (l), Labor Management Relations Act of 1947, 29 U. S. C. A. 160 (b) (j) (k) and (l).) Therefore, since no unfair labor practice is alleged subsequent to the effective date of the Labor Management Relations Act of 1947, the National Labor Relations Board has no jurisdiction to proceed against appellees and appellant has no administrative remedy.

VI.

Appellant has not argued in his Opening Brief that the Civil Rights Statutes protect him in this case.

VII.

Appellant has not argued in his Opening Brief that the California Labor Code vested jurisdiction in the District Court.

VIII.

Whatever may be the opinion of appellees concerning the effect of *Oyama v. State of California,* 332 U. S. 633, 68 S. Ct. 269, on the right of aliens ineligible to citizenship to hold land, the State of California is now convinced that under the *Oyama* case such aliens can hold California lands, having agreed to reverse judg-

ments providing for escheat of such lands. *People v. Fugita,* 31 Cal. 2d 872, 192 P. 2d 948; *People v. Federal Land Bank,* 31 Cal. 2d 871, 192 P. 2d 948. Furthermore, there appears no doubt today that a State agency cannot prevent aliens ineligible to citizenship from carrying on the common occupations of life such as fishing in its coastal waters. *Takahashi v. Fish and Game Commission,* 334 U. S. 410, 68 S. Ct. 1138, 92 L. Ed. (Adv. Ops.) 1096.

Appellant has specifically alleged that the Constitution of Appellee IATSE is unreasonable, arbitrary, capricious and without jurisdiction [Tr. 23], and the Motion to Dismiss admits all properly pleaded matters in the complaint. However, all recent decisions of the Supreme Court of the United States have struck down every attempt at discrimination by such agencies as labor unions and State agencies. If the appellees, acting under Federal powers, were specifically authorized by Congress to exclude aliens, an entirely different question might be involved. No such authorization appears and it is just as unthinkable for the appellees to discriminate because of citizenship as for any Governmental agency to do so when not specifically authorized by Congressional authority.

IX.

It appears to appellant that appellees have misinterpreted the various cases setting forth the duties of collective bargaining agencies who are the exclusive representatives of all employees under the National Labor Relations Act.

Appellees having undertaken to act for *a majority* of the members of the craft are required, even against their own will, to act on behalf of *all.*

> "So long as a labor union assumes to act as the statutory representative of a craft, it cannot rightly refuse to perform the duty, which is inseparable from the power of representation conferred upon it, to represent the entire membership of the craft."
>
> *Steele v. Louisville & N. R. Co.,* 323 U. S. 192, 204, 65 S. Ct. 226, 233.

Other cases setting forth the principle that the union as exclusive bargaining representative must act on behalf of all in the craft are referred to in pages 14 through 27 of Appellant's Opening Brief.

X.

Appellees contend under point X of their Answering Brief that the doctrine set forth in *Wallace Corporation v. N. L. R. B.,* 323 U. S. 248, 65 S. Ct. 238, 89 L. Ed. 216, is confined to company dominated unions. Numerous cases decided by the Federal and State courts have not so limited the *Wallace* case. A recent case is *Colonie Fibre Co. v. N. L. R. B.* (C. C. A. 2), 163 F. 2d 65, where an A. F. of L. union not dominated by the employer caused the discharge of an employee because of his failure to maintain membership in that union.

The second part of this point of appellees is that appellant was not an employee at the time the closed shop contracts were entered into. Appellees state:

> "The condition of which appellant complains existed on and before his arrival in this country; it is thus he found it and it has not since changed." (Answering Brief of Appellees, page 49.)

We believe this point is answered by the following quotation in the *Wallace* case:

> "The duties of a bargaining agent selected under the terms of the Act extend beyond the mere representation of the interests of its own group members. By its selection as bargaining representative, it has become the agent of all the employees, charged with the responsibility of representing their interests fairly and impartially. Otherwise, employees who are not members of a selected union at the time it is chosen by the majority would be left without adequate representation."
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> *Wallace Corporation v. N. L. R. B.,* 323 U. S. 248, 255, 256, 65 S. Ct. 238, 241, 242.

Respectfully submitted,

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